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“The Price We Pay”? Pornography and Harm

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Defenders of civil liberties have typically held, with J. S. Mill, that governments may justifiably exercise power over individuals, against their will, only to prevent harm to others (Mill, 1978: ch. 1).¹ Until the 1970s, liberals and libertarians assumed that since producers and consumers of pornography clearly didn't harm anyone else, the only reasons their opponents had for regulating pornography were that they considered it harmful to the producers or consumers, that they thought it an offensive nuisance, and that they objected, on moral or religious grounds, to certain private sexual pleasures of others. None of these reasons was taken to provide grounds for regulating pornography, however, since individuals are considered to be the best judges of what is in their own interest (and, in any case, they cannot be harmed by something to which they consent), what is merely offensive may be avoided (with the help of plain brown wrappers and zoning restrictions), and the private sexual activities, of consenting adults anyway, are no one else's, certainly not the state's, business.

In the 1970s, however, the nature of the pornography debate changed as an emerging group of feminists argued that what is wrong with pornography is not that it morally defiles its producers and consumers, nor that it is offensive or sinful, but, rather, that it is a species of hate literature as well as a particularly insidious method of sexist socialization. Susan Brownmiller was one of the first to take this stance in proclaiming that “[p]ornography is the undiluted essence of anti-female propaganda” (1975: 443). On this view, pornography (of the violent degrading variety) harms women by sexualizing misogynistic violence. According to Catharine MacKinnon, “[p]ornography sexualizes rape, battery, sexual harassment, prostitution, and child sexual abuse; it thereby celebrates, promotes, authorizes, and legitimizes them” (1987: 171).

The claim that women are harmed by pornography has changed the nature of the pornography debate, which is, for the most part, no longer a debate between liberals

who subscribe to Mill's harm principle and legal moralists who hold that the state can legitimately legislate against so-called “morals offenses” that do not harm any non-consenting adults. Rather, the main academic debates now take place among those who subscribe to Mill's harm principle, but disagree about what its implications are for the legal regulation of pornography. Some theorists hold that violent degrading pornography does not harm anyone and, thus, cannot justifiably be legally regulated, socially stigmatized, or morally condemned. Others maintain that, although it is harmful to women, it cannot justifiably be regulated by either the civil or the criminal law, since that would cause even greater harms and/or violate the legal rights of pornography producers and consumers, but that, nevertheless, private individuals should do what they can (through social pressure, educational campaigns, boycotts, etc.) to put an end to it. Still others claim that such pornography harms women by violating their civil right to be free from sex discrimination and should, for that reason, be addressed by the law (as well as by other means), just as other forms of sex discrimination are. But others argue that restricting such pornography violates the moral rights of pornography producers and consumers and, thus, restrictions are morally impermissible. Later in this chapter I will argue that there is no moral right to such pornography.

What is Pornography?

First, however, I need to articulate what is at issue, but this is hard to do, given various obstacles to describing the material in question accurately. (I have encountered the same problem in writing about sexual violence.) There is too much at stake to be put off writing about issues of urgent import to women because of squeamishness or fear of academic impropriety – but how can one write about this particular issue without reproducing the violent degrading pornography itself? (Recall the labeling of Anita Hill as “a little nutty and a little slutty” because she repeated, in public, the sexually demeaning language that Clarence Thomas had uttered to her in private.) However, if one doesn't write graphically about the content of violent degrading pornography, one risks being viewed as either crazy (“she must be imagining things!”) or too prudish to talk frankly about sex. And what tone should one adopt – one of scholarly detachment or of outrage? There is a double bind here, similar to that faced by rape victims on the witness stand. If they appear calm and rational enough for their testimony to be credible, that may be taken as evidence that they cannot have been raped. But if they are emotional and out of control enough to appear traumatized, then their testimony is not considered reliable.

Any critic of violent degrading pornography risks being viewed not only as prudish (especially if the critic is a woman), but also as meddling in others' “private” business, since we tend not to see the harm in pornography – harm which is often made invisible and considered unspeakable. But “we” used not to see the harm in depriving women and minorities of their civil rights. And “we” used not to see the harm in distributing postcards depicting and celebrating lynchings. More recently, “we” didn't see the harm in marital or “date” rape, spousal battering, or sexual harassment. Even now, as Richard Delgado and Jean Stefancic point out:

[M]embers of the empowered group may simply announce to the disaffected that they do not see their problem, that they have looked for evidence of harm but cannot find it. Later generations may well marvel, "how could they have been so blind?" But paradigms change slowly. In the meantime, one may describe oneself as a cautious and principled social scientist interested only in the truth. And one's opponent, by a neat reversal, becomes an intolerant zealot willing to trample on the liberties of others without good cause. (1997: 37)

A further problem arises in critically analyzing violent degrading pornography, deriving from precisely those harmful aspects of it being critiqued, which is that descriptions of it and quotations from it can themselves be degrading, or even retraumatizing, especially for women who have been victimized by sexual violence. But one thing that is clear is that feminist critics of such pornography are *not* criticizing it on the grounds that it is erotic, or sexually arousing, or that it constitutes "obscenity," defined by the Court as "works which, taken as a whole, appeal to the prurient interest in sex, which portray sexual conduct in a patently offensive way, and which, taken as a whole, do not have serious literary, artistic, political or scientific value" (*Miller v. California*, 1973: 24). Those who work on this issue – and have familiarized themselves with the real world of the pornography industry – know all too well that pornography is not merely offensive. In contrast, here is how some of them define "pornography":

[T]he graphic sexually explicit subordination of women through pictures or words that also includes women dehumanized as sexual objects, things, or commodities; enjoying pain or humiliation or rape; being tied up, cut up, mutilated, bruised, or physically hurt; in postures of sexual submission, servility or display; reduced to body parts, penetrated by objects or animals, or presented in scenarios of degradation, injury, torture; shown as filthy or inferior; bleeding, bruised, or hurt in a context that makes these conditions sexual. (MacKinnon, 1987: 176)²

I define "pornography," for the purposes of this chapter, as violent degrading misogynistic hate speech (where "speech" includes words, pictures, films, etc.). I will argue that, if pornography unjustly harms women (as there is reason to suppose it does), then there is no moral right to produce, sell, or consume it. (I will not here be arguing for or against its legal restriction and no position on that issue is dictated by my arguments against the alleged moral right.)

Pornography and Harm

I cannot hope to portray adequately the harms inflicted on girls and women in the production of pornography (for the reasons given above), but there is plenty of research documenting them. One of the most powerful forms of evidence for such harms is the first-person testimony of "participants" in pornography. (Those who are interested in reading more about this are referred to the Attorney-General's Commission on Pornography, 1986; Itzen, 1992; Lederer, 1980; Lederer and Delgado, 1995; MacKinnon, 1987; MacKinnon, 1993; MacKinnon and Dworkin, 1997; Russell, 1993.)

A not uncommon scenario in which a girl becomes trapped in the pornography industry is described by Evelina Giobbe in her testimony to the US Attorney-General's Commission on Pornography. After running away from home at age 13 and being raped her first night on the streets, Giobbe was befriended by a man who seemed initially kind and concerned, but who, after taking nude photographs of her, sold her to a pimp who raped and battered her, threatening her life and those of her family until she "agreed" to work as a prostitute for him. Her "customers" knew she was an adolescent and sexually inexperienced. "So," she testified, "they showed me pornography to teach me and ignored my tears and they positioned my body like the women in the pictures, and used me." She tried on many occasions to escape, but, as a teenager with no resources, cut off from friends and family, who believed she was a criminal, she was an easy mark for her pimp: "He would drag me down streets, out of restaurants, even into taxis, all the while beating me while I protested, crying and begging passers-by for help. No one wanted to get involved" (quoted in Russell, 1993: 38). She was later sold to another pimp who "was a pornographer and the most brutal of all." According to her testimony, he recruited other girls and women into pornography by advertising for models:

When a woman answered his ad, he'd offer to put her portfolio together for free, be her agent, and make her a "star." He'd then use magazines like *Playboy* to convince her to pose for "soft-core" porn. He'd then engage her in a love affair and smooth talk her into prostitution. "Just long enough," he would say, "to get enough money to finance your career as a model." If sweet talk didn't work, violence and blackmail did. She became one of us. (Quoted in Russell, 1993: 39)

Giobbe escaped the pornography industry by chance, after "destroy[ing] herself with heroin" and becoming "no longer usable." She considers herself one of the lucky ones – "a rare survivor" (quoted in Russell, 1993: 39–40). And this was *before* the AIDS epidemic.

More recently, according to an article in the *Sunday New York Times Magazine*, pornography – of an increasingly violent sort – has played an important role in the global sex trafficking of girls and women who, lured by promises of employment (for example, as nannies or waitresses), end up trapped in foreign countries, with no money, no (legal) papers, no family or friends, and no ability to speak the local language. Immigrations and Customs Enforcement (ICE) agents at the Cyber Crimes Center in Fairfax, Virginia are "tracking a clear spike in the demand for harder-core pornography on the Internet. 'We've become desensitized by the soft stuff; now we need a harder and harder hit', says ICE Special Agent Perry Woo." With ICE agents, the author of the article looked up a website purporting to offer sex slaves for sale: "There were streams of Web pages of thumbnail images of young girls of every ethnicity in obvious distress, bound, gagged, contorted. The agents in the room pointed out probable injuries from torture" (Landesman, 2004: 72). "'With new Internet technology', Woo said, 'pornography is becoming more pervasive. With Web cams we're seeing more live molestation of children'" (Landesman, 2004: 74).

It is not enough to say that the participants in pornography consent, *even* in the case of adult women who apparently do, given the road many have been led (or

dragged) down, since childhood in some cases, to get to that point. Genuine autonomous consent requires the ability to evaluate critically and to choose from a range of significant and worthwhile options. Even if all the participants genuinely consented to their use in the pornography industry, however, we would need to consider how pornography influences how *other* non-consenting women are viewed and treated. Compare the (thankfully imaginary) scenario in which some blacks consented to act servile or even to play the part of slaves – who are humiliated, beaten, and whipped for the pleasure of their masters. Suppose a *lot* of whites got off on this and some people got a lot of money from tapping into (and pumping up) the desire for such films. And suppose the widespread consumption of such entertainment – a multi-billion-dollar industry, in fact – influenced how whites generally viewed and treated blacks, making it harder than it would otherwise be for blacks to overcome a brutal and ongoing legacy of hate and oppression. It is unimaginable that we would tolerate such “entertainment” simply because some people got off on it.

To give another analogy, the fact that scabs will work for less money (in worse conditions) than strikers harms the strikers. It makes it harder for the strikers to work under fair conditions. Sure, the scabs benefit; however, that’s not the point. The point is that the strikers suffer. Suppose there were “slave auction” clubs where some blacks allowed themselves to be brutalized and degraded for the pleasure of their white customers. Suppose the black “performers” determined that, given the options, it was in their best interest to make money in this way. Their financial gain – imagine that they are highly paid – more than compensates for the social harm to them as individuals of being subjected to a slightly increased risk (resulting from the prevalence of such clubs) of being degraded and brutalized outside their workplace. Some of them even enjoy the work, having a level of ironic detachment that enables them to view their customers as pathetic or contemptible. Some, who don’t actually enjoy their work, don’t suffer distress, since they manage to dissociate during it. Others are distressed by it, but they have determined that the financial benefit outweighs the psychic and physical pain. For those blacks who did not work in the clubs, however, there would be nothing that compensated for their slightly increased risk of being degraded and brutalized as a result of it. They would be better off if the clubs did not exist. The work done by the blacks in the clubs would make it harder for other blacks to live their lives free of fear.

The harms caused by pornography to non-participants in its production – often called “indirect” or “diffuse” harms, which makes them sound less real and less serious than they actually are – include (1) harms to those who have pornography forced on them, (2) increased or reinforced discrimination against – and sexual abuse of – girls and women, (3) harms to boys and men whose attitudes toward women and whose sexual desires are influenced by pornography, and (4) harms to those who have already been victimized by sexual violence. The first three categories of harm have been amply documented (Attorney-General’s Commission on Pornography, 1986; Itzen, 1992; Lederer, 1980; Lederer and Delgado, 1995; MacKinnon, 1987; MacKinnon, 1993; MacKinnon and Dworkin, 1997; Russell, 1993). That the proliferation of pornography leads to attitudinal changes in men, which, in turn, lead to harmful behavior, should not be surprising, especially given the high rates of exposure to pornography of pre-teen and teenage boys. On the contrary, as Frederick Schauer, Frank Stanton

Professor of the First Amendment at the John F. Kennedy School of Government at Harvard University, testified at the Pornography Civil Rights Hearing in Boston, Massachusetts on March 16, 1992:

I find it a constant source of astonishment that a society that so easily and correctly accepts the possibility that a cute drawing of a camel can have such an effect on the number of people who take up smoking, has such difficulty accepting the proposition that endorsing images of rape or other forms of sexual violence can have an effect on the number of people who take up rape. (cited in MacKinnon and Dworkin, 1997: 396)

One might object, though, that pornography is merely a symptom (of a misogynistic, patriarchal society), not a cause. Even if this were the case, however, that would not mean that we should not be concerned about it. The fact that there are so few female legislators in the US at the federal level (and that it’s still inconceivable that a woman could be elected president) is a symptom, not a cause, of patriarchy. But this does not mean that we should not do anything about the political status quo. In any case, pornography is more than a mere symptom: it fosters and perpetuates the sexist attitudes that are essential for its enjoyment, even if it does not create them.

It should be noted here that the fact that the *point* of pornography (from the standpoint of the producers) is to make money by giving pleasure does not mean that it cannot also be harmfully degrading. On the contrary, it is pleasurable (and profitable) *precisely because* it is degrading to others. And it is reasonable to expect a spill-over effect in the public domain, since its enjoyment requires the adoption of certain attitudes. Compare the case of pornography with that of sexist humor. Until quite recently, it used to be maintained that women who were offended by sexist jokes were simply humorless. After all, it was held, one can laugh at a sexist joke (because it’s funny) and not *be* a sexist. Now it is widely acknowledged that such jokes are funny only if one holds certain sexist beliefs: in other words, the humor is contingent upon the beliefs.³ With regard to pornographic depictions, it would be difficult to argue that the degradation and subordination of women they involve are merely incidental to their ability to arouse. The arousal is dependent on the depiction of degradation, just as, in sexist humor, the humor is dependent on the sexism. I stress this in order to deflect the objection that the *point* of pornography is to give pleasure, not to defame or degrade women.

It might be argued that one could laugh at sexist jokes and enjoy sexist pornography *in private* without this having any effect on one’s ability to view women as equals *in public* and to treat them accordingly. But are we really so good at keeping our private and public attitudes distinct? Suppose it became known that a white public official – say, a judge – privately relished racist humor, collected racist paraphernalia, and showed old racist films at home for the entertainment of his close friends and family. Although one might not want there to be laws against such reprehensible behavior (for their enforcement would require gross invasions of privacy), one would presumably consider such *private* behavior to compromise the integrity of the judge’s public position. (Were this judge’s pastime to be made public during his confirmation hearings for a seat on the Supreme Court, for example, it would presumably defeat his nomination.)

It is easier for us, now, to see the harm in the dehumanization of blacks and Jews in racist and anti-Semitic propaganda. We are well aware that the Nazis' campaign to exterminate the Jews utilized anti-Semitic propaganda which portrayed Jews as disgusting, disease-ridden vermin. In addition, "Nazis made Jews do things that would further associate them with the disgusting," making them scrub latrines to which they were then denied access (Nussbaum, 2001, p. 348). This in turn made them appear less than human. As Primo Levi observed in *The Drowned and the Saved*:

The SS escorts did not hide their amusement at the sight of men and women squatting wherever they could, on the platforms and in the middle of the tracks, and the German passengers openly expressed their disgust: people like this deserve their fate, just look how they behave. These are not *Menschen*, human beings, but animals, it's as clear as day. (Quoted in Nussbaum, 2001: 348)

It is harder for us to see the same process of dehumanization at work when girls and women are routinely portrayed as being worthy of degradation, torture, and even death. But empirical studies have shown that exposure to such portrayals increases the likelihood that people will take actual sexual violence less seriously – and even consider it to be justified in some cases (see Lederer and Delgado, 1995: 61–112; MacKinnon and Dworkin, 1993: 46–60; Russell, 1993: 113–213).

There is another connection between the dehumanization of girls and women in pornography and their brutalization in rape, battering, forced prostitution, and sexual murder, which is that, in a society where women are victimized in these ways at an alarming rate, it shows a callous disregard for the actual victims to have depictions of sexual violence bought and sold as entertainment. For a short while, after 9/11, we empathized so much with the victims of the terrorist attacks that films of similarly horrifying attacks were withdrawn because they were no longer considered entertaining. But victims of sexual violence are given so little respect that many of us see nothing wrong with being entertained by depictions of what they have had to endure.

If we take seriously the harm of pornography, then we want to know what to do about it. Should the government intervene by regulating it? The standard debate over pornography has framed it as a free speech issue. The drafters of an anti-pornography ordinance adopted by the city of Indianapolis argued that pornography constitutes a violation of the civil rights of women. In response to those who asserted that the First Amendment protected pornography, they argued that pornography violated the First Amendment rights of women (by "silencing" them – depriving them of credibility and making "no" appear to mean "yes" in rape scenarios) as well as their Fourteenth Amendment rights to equal protection. In his opinion in *American Booksellers Association v. Hudnut*, which ruled unconstitutional the Indianapolis anti-pornography ordinance, Judge Frank Easterbrook acknowledged that pornography harms women in very significant and concrete ways:

Depictions of subordination tend to perpetuate subordination. The subordinate status of women in turn leads to affront and lower pay at work, insult and injury at home, battery and rape on the streets. In the language of the legislature, "[p]ornography is central in

creating and maintaining sex as a basis of discrimination. Pornography is a systematic practice of exploitation and subordination based on sex which differentially harms women. The bigotry and contempt it produces, with the acts of aggression it fosters, harm women's opportunities for equality and rights [of all kinds]." Indianapolis Code §16-1(a)(2). Yet this simply demonstrates the power of pornography as speech" (*American Booksellers Association, Inc. v. Hudnut*, 1985: 329).⁴

Easterbrook seems to take the harms of pornography seriously, but he then goes on to talk about its "unhappy effects" which he considers to be the result of "mental intermediation." He assumes that speech has no (or merely negligible) effects that are not under the conscious control of the audience, although this assumption is undermined not only by the widely acknowledged power of advertising, but also by recent work in cognitive neuroscience on the prevalence of unconscious imitation in human beings.⁵ It might be argued, though, that, if we consider the producers of pornography to be even partially responsible for the violence perpetrated by some of its consumers, then we must consider the perpetrators *not* to be responsible or to be less than fully responsible for their crimes. But this does not follow. Even if the perpetrators are considered to be 100 percent responsible, some responsibility can still be attributed to the pornographers. (In fact, two or more people can each be 100 percent responsible for the same crime, as in the case of multiple snipers who simultaneously fire many shots, fatally wounding their victim.)

The courts have, for now, decided that even if serious harm to women results from it, pornography is, *qua* speech, protected (except for that material which also meets the legal definition of obscenity). That is, there is, currently, a *legal* right to it, falling under the right to free speech. But *should* there be?

A Moral Right to Pornography?

Of course we value freedom of speech. But how should we value it? What should we do when speech is genuinely harmful? Traditionally, in the US, the right to free speech is held to be of such high importance that it trumps just about everything else. For example, in the *Hudnut* case, discussed above, it was acknowledged that the pornography producers' and consumers' right to free speech was in conflict with women's right to equal protection, but it was asserted (without argumentation) that the free speech right had priority. Acceptance of this claim without requiring a defense of it, however, amounts to adopting a kind of free speech fundamentalism. To see how untenable such a view is, suppose that uttering the words "you're dead" caused everyone within earshot (but the speaker) to fall down dead. Would anyone seriously say that such speech deserved protection? Granted, the harms of pornography are less obvious and less severe, but there is sufficient evidence for them for it to be reasonable to require an argument for why the legal right to it should take priority over others' legal rights not to be subjected to such harms.

If we reject free speech fundamentalism, the question of whether pornography should be legally restricted becomes much more complicated. My aim here is not to articulate or defend a position on this question, but I do want to stress that whatever

view we take on it should be informed by an understanding of the harms of pornography – the price some people pay so that other people may get off on it.

In his chapter in this volume, “The Right to Get Turned On: Pornography, Autonomy, Equality,” Andrew Altman shifts the debate over pornography in a promising way by arguing that there is a *moral* right to (even violent misogynistic) pornography, falling not under a right to free speech, but, rather, under a right to sexual autonomy (which also covers the right to use contraceptives and the right to homosexual sex).⁶ On this view, which Altman dubs “liberal sexual morality,” whatever harm results from pornography is just the price we pay for the right to sexual autonomy. Sexuality is an important, arguably central, aspect of a flourishing human life. Sexual expression is one of the primary ways we define ourselves and our relations to others, and a healthy society should value and celebrate it. But what does it add to these claims to say that we have a moral *right* to sexual autonomy? And, if we do have such a right, does it include a right to produce, distribute, and consume pornography (defined, as above, as violent degrading misogynistic hate speech)?

Although philosophers disagree about the nature of rights (and, indeed, even about whether such things exist at all), most hold that to say that someone, X, has a moral right to do something, y, means that others are under a duty not to interfere with X’s doing y. (Of course, X’s right is limited by others’ rights, as expressed by the saying “your right to swing your arm ends at my face.”) But beyond this, there is little agreement. Some hold that rights are natural, inalienable, and God-given. Others hold that rights-talk is just short-hand for talk about those interests that are especially important to us (for example, because protecting them tends to increase our welfare). Some hold that we have positive rights, just by virtue of being human, such that other people are under an obligation to provide us with whatever we need to exercise those rights. (If there is a positive right to education, for example, then society has an obligation to provide free public education for all.) Others hold that we have only negative rights (unless individuals *grant* us positive rights by, for example, making promises to assist us), which require only that other people do not interfere with our exercising those rights. (The right to privacy, if taken to be simply a right to be left alone, is an example of a negative right.)

On any account, the concept of a right is diffuse. To say that X has a moral right to do y does not, by itself, say very much, unless we specify what others are required to do (or to refrain from doing) in order not to violate that right. There is a wide range of different responses to X’s doing y, given that X has a right to do y – from complete acceptance (or perhaps even positive support) to something just short of physical restraint or intervention. Where is the alleged right to pornography located on this spectrum of moral assessment?

Altman considers the right to pornography and the right to sexual orientation to have the same foundation in a right to sexual autonomy. What should our (society’s) attitude be toward the exercising of that right? Should we tolerate it, that is, have no laws against it, while allowing private individuals to lobby against it or to try to dissuade people from it? Or should we actively embrace it? Assimilating the right to pornography to the right to sexual orientation muddies the waters here. Presumably, according to liberal sexual morality, the right to sexual orientation requires more than mere tolerance. It requires society’s complete acceptance (and, I would argue, posi-

tive support, given that prejudice and violence against gays and lesbians persist in our society). It is wrong to hold that gays and lesbians have “bad characters” or to try to get them to “reform.”

The right to pornography, however, does not lie on the same end of the spectrum, since Altman claims that getting off on pornography is a sign of a bad character. Some feminists and liberals who defend a legal right to pornography hold at the same time that all sorts of private pressure – protests, boycotts, educational campaigns – should be brought to bear on the pornographers. Altman’s position is that there is not just a legal right, but also a *moral* right to pornography, even if there is something bad about exercising it. There are persuasive reasons for holding that we have legal rights to do some things that are morally wrong, in cases in which enforcement would be impossible or would involve gross violations of privacy. But Altman seems to hold that we have a *moral* right to do some things that are morally wrong. What does this mean? It cannot mean that people have a right to do things that are wrong in that they harm others. It might mean that people have the right to do things that other people consider wrong (but that are not harmful to others) – that is, people have the right to do harmless things that other people morally disapprove of. However, if the behavior, e.g. engaging in homosexual sex, is not unjustly harming others, then liberals who subscribe to Mill’s harm principle have no grounds for considering it to be wrong.

So where should the right to pornography be located on the spectrum of moral assessment? There is no one answer to this question. We need to look at particular cases. Suppose I have a 21-year-old son – leaving aside the question of whether minors have a right to pornography – who is a heavy consumer of pornography (of the kind I’ve been talking about). What does his (alleged) right to pornography entail? Given my opposition to pornography, presumably I would not be under an obligation positively to support his pornography habit by buying it for him. But would I have to pretend that I’m not aware of it? Would I be under a duty not to try to dissuade him from viewing pornography? Would his sister be under a duty not to throw the magazines out when she saw them in common areas of the house? Would it be wrong for his buddies to try to talk him out of it? Would his teachers have a duty to refrain from arguing against it? Would it be wrong for his neighbors to boycott the local convenience store that sold it? Would his girlfriend (or boyfriend) who became convinced it was ruining their relationship be under a moral duty not to rip it out of his hands? If the answer to each of the above questions is “no,” which I think it is, then it’s not clear what, if anything, his right entitles him to.⁷ What is clear is that, if a right to pornography exists, it is quite unlike a right to engage in homosexual sex or to use contraceptives, and is located at the opposite end of the spectrum of moral assessment.

Perhaps there is, nevertheless, something special about sexual arousal (“getting turned on”) that gives it special moral status. But Altman has not said what makes sexual arousal different (in a morally significant way) from other forms of arousal – for example, that of racial animus. It makes sense to say that there is a right to be turned on – not a special right, but, rather, one falling under a general right to liberty, but this general right to liberty is delimited by the harm principle. There is no general right to have pleasurable feelings (of any sort, sexual or otherwise) that override

others' rights not to be harmed. There is no moral right to achieve a feeling of comfort by unjustly discriminating against homosexuals on the grounds that associating with them makes you uncomfortable. Likewise, there is no moral right to achieve a feeling of superiority (no matter how pleasurable such a feeling might be) by discriminating against those of a different race. And it doesn't matter how central to one's self-definition the feeling in question might be. For parents, the satisfaction of ensuring the good upbringing and education of their children is of paramount importance, and yet this degree of importance does not give racist parents the right to racially segregated housing or schools.

It might be argued that sexual arousal is special in that it is a bodily pleasure and, thus, more natural, possibly even immutable. Even if this were so, it would not follow that one has a right to achieve it by any means necessary. To take an example of another kind of "bodily" pleasure, suppose that there are gustatory pleasures that can be achieved only in immoral ways – for example, by eating live monkey brains (which some people used to do), or organs or flesh "donated" by (or purchased from) living human beings, or food that has been stolen from the people on the verge of starvation. That there is a (general) right to enjoy eating what one chooses to eat – it would be (in general) wrong, for example, for me to force you to eat, or not to eat, something – does not mean that one has a right to eat whatever gives one pleasure.

But it is not the case that what people find sexually arousing is a simple biological fact about them, a given, something immutable. People can be conditioned to be aroused by any number of things. In one study, for example, men were conditioned to be aroused by a picture of a woman's boot (Russell, 1993: 129). Emotions, especially ones with strong physiological components, such as sexual arousal, *feel* natural. They don't seem to be socially constructed, because we don't (at the time) consciously choose them: they just *are*. But emotions are, at least to some extent, learned reactions to things. There are gender differences in emotional reactions; for example, men tend to get angry in some situations in which women tend to feel not angry, but hurt. But this does not mean that such differences are *natural*.

Given the wide variety of sexual fantasies and fetishes we know about, it's conceivable that just about *anything* could be a turn on for someone – looking at photos of dead, naked bodies piled in mass graves in Nazi death camps, for example, or looking at photos of lynched black men. According to liberal sexual morality, the only reason for supposing that there might not be a moral right to make a profit from and get off on such "pornography" would be that the photographed people are posthumously harmed by it (given that they did not consent to their images being used in this way). But suppose they had consented. Or suppose, more plausibly, that the images were computer-generated – completely realistic-looking, but not images of actual individuals. Liberal sexual morality would have to allow (some) people to make money by others' getting turned on by these images. Not only that, but, given that sexual desires are malleable, the pornographer also has a right to make money by acculturating others to be turned on by such images. (In other words, the pornographer has a right to turn the world into a place where people get turned on by such images.) And, if our attitude toward this is grounded in the right to sexual autonomy, it should be similar to our attitude toward homosexuality: we shouldn't merely tolerate it, we should come to accept and support it.

While conceding that there are limits to the right to sexual autonomy – it is constrained by the harm principle – Altman assumes (as most liberals do) that one cannot be harmed by something to which one consents. I argued earlier that the way many models get lured into the pornography industry should make us at least question the extent to which they are consenting to what is being done to them. But suppose they do consent. Does that mean that we must tolerate the production and use of whatever pornography results? Unfortunately, one doesn't have to construct a thought experiment to test our intuitions about this. According to *The New York Times*, Armin Meiwes, "[a] German computer technician who killed and ate a willing victim he found through the Internet" was recently convicted of manslaughter. His "victim," Bernd-Jürgen Brandes, had "responded to an Internet posting by Mr Meiwes seeking someone willing to be 'slaughtered.'" "Both were looking for the ultimate kick," the judge said. It was "an evening of sexual role-playing and violence, much of it videotaped by Mr Meiwes," enough to convince the court that the "victim" had consented (Landler, 2004: A3). Does the right to sexual autonomy include the rights to produce, sell, and get turned on by the videotape of this "slaughter" – a real-life instance of a snuff film? If we cannot *prove* that there is a causal connection between the film and harm to others, the answer, according to liberal sexual morality, is "yes."

Altman claims that "even if a causal connection between violent pornography and sexual violence were clearly established, it would still be insufficient to conclude that, in contemporary society, the production, distribution and viewing of violent pornography lay beyond the limits of an adult's right to sexual autonomy" because *other* media – he cites "slasher films" – arguably "cause at least some amount of violence against women, sexual and otherwise. However, it is unreasonable to deny that adults have a right to produce, distribute, and view such movies" (2005: 229). Why, if one has established that, say, "slasher films" are harmful, we must hold that adults have a right to them is not explained. But even if we agree that adults have the right to produce/consume non-pornographic media even if it is as harmful as pornography, it does not follow that adults have the right to produce/consume pornography. To assume that it does would be like arguing against prohibiting driving while talking on cell phones on the grounds that this is not the *only* thing (or even the main thing) contributing to automobile accidents.

Altman accepts that "it is reasonable to hold that the existence of . . . pornography makes it more difficult for women to live their lives as the sexual equals of men – i.e., more difficult relative to a society which was ruled by a liberal sexual morality and had fewer women, or none at all, who were willing to engage in humiliating conduct as part of the production of pornographic materials," (Altman, 2005: 233), but he notes that women are better off in a society with liberal sexual morality than in a society with traditional sexual morality (for example, Saudi Arabia). I agree, but surely these are not the only two possibilities. I would advocate the alternative of a progressive sexual morality. What might that look like? We don't even know. Even our most deep-seated assumptions about sexuality may turn out to be mistaken. We used to view rape as being motivated purely by lust and battering as a way of showing spousal love. Some of us still do. Gradually, however, we are breaking the link between sexuality and violence. Perhaps some day we'll have reached the point where sexual

violence is no longer arousing, where it makes no sense to talk of killing and being killed as the "ultimate" sexual "kick."

According to liberal sexual morality, the harms of pornography are the price we pay for having the right to sexual autonomy in other areas – e.g. the right to have sex (including homosexual sex) outside of marriage and the right to use contraceptives. But this view (of the right to sexual autonomy as an all-or-nothing package) is formed in response to legal moralism, and makes sense only if one considers all these rights to be rights to do harmless things that some people nevertheless morally condemn. In such cases, proponents of liberal sexual morality say: "If you don't like it, don't look at it (or hear about it or think about it)." This is a satisfactory response only if the behavior in question isn't harming anyone. But as our views about what constitutes harm have changed, our views of what is our business have also changed. Just as we no longer look the other way in response to marital or "date" rape, domestic violence, and sexual harassment, we should no longer accept pornography's harms as the price we pay for sexual autonomy.

Notes

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- 1 Mill considered his harm principle to apply equally to governmental regulation and to "the moral coercion of public opinion." The harm principle states that ". . . the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others" (1978: 9). Mill does not specify what counts as harm. Following Joel Feinberg (1984), I consider it to be a wrongful setback to one's significant interests.
- 2 This is the definition used in the anti-pornography ordinance drafted by Andrea Dworkin and Catharine MacKinnon, passed by the city of Indianapolis, but ruled unconstitutional by the courts.
- 3 For a persuasive argument to that effect, see de Sousa (1987). In comparing sexist fantasies with sexist and racist humor, one might reply, however, that we have less control over, and thus are less responsible for, our fantasies than our jokes. This seems right, to the extent that we can refrain from laughing at or telling certain jokes (even though we might not be able to resist finding them funny). But the same distinction applies to fantasies. We do not always choose the fantasies that occur to us, but we can choose whether or not to cultivate them (voluntarily return to them repeatedly, make or view films about them, etc.). Even in the case of dreams, over which we, at the time, anyway, have no control, a white male liberal would be alarmed if he often had pleasurable dreams of watching blacks getting lynched. This would presumably prompt some probing of his unconscious attitudes about blacks.
- 4 This view can't consistently be held, however, by liberals and feminists who support laws against sex or race discrimination and segregation in schools, workplaces, and even private clubs. One doesn't hear the argument that if segregation harms minorities' opportunities for equal rights this simply demonstrates the power of freedom of association, which is also protected by the First Amendment.

- 5 The recent research discussed in Hurley (2004) suggests that the imitation of others' behavior, including others' violent acts, is not a consciously mediated process, under the autonomous control of the viewers/imitators.
- 6 Since some theorists ground the right to free speech in a right to autonomy, however, there may not be such a sharp distinction between these two approaches. See Brison (1998).
- 7 I also mean for the above thought experiment to illustrate the fact that the nature of the duty one has with respect to the holder of the alleged moral right to pornography depends on one's relationship to the right-holder. Presumably a neighbor would be under a duty not to snatch pornography out of the right-holder's hands. But if someone else, the right-holder's lover, say, is under no such duty, then it's not clear what the right amounts to.

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